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ACT No. VI OF 1899.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.
(Received the assent of the Governor General on the 17th February, 1899.)

An Act to amend the Indian Contract Act, 1872.

IX of 1872.

WHEREAS it is expedient to amend the Indian Contract Act, 1872; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Contract Act Amendment Act, 1899.

Short title, commencement and application.

(2) It shall come into force on the first day of May, 1899; and

(3) It shall apply to every contract in respect of which any suit is instituted, or which is put in issue in any suit, after the commencement of this Act.

IX of 1872.

2. Section 16 of the Indian Contract Act, 1872, is hereby repealed, and the following is substituted therefor, namely:—

Substitution of new section for section 16, Act IX, 1872.
“Undue influence” defined.

‘16. (1) A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently

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permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872. I of 1872.

Illustrations.

(a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

3. In section 19 of the said Act the words "undue influence" are hereby repealed, and after the same section the following is inserted, namely:—

Amendment of section 19 of, and addition of new section to, Act IX, 1872.
Power to set aside contract induced by undue influence.

"19A. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received

received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(b) A, a money-lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent. per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just."

4. (1) Section 74, paragraph one, of the said Act is hereby repealed and the following is substituted therefor, namely:—

Amendment of section 74, Act IX, 1872.

"74. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Compensation for breach of contract where penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty."

(2) After illustration (c) to the said section the following *illustrations* shall be added, namely:—

"(d) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent. at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent. from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.

(e) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of

penalty,

penalty, and B is only entitled to reasonable compensation in case of breach.

(f) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments, with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(g) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty."